



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2004

Ms. Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2004-0073

Dear Ms. Bergeron:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193725.

The Texas Commission on Environmental Quality (the "commission") received a request to inspect a specified federal operating permit, including the permit application, statement of basis, and draft permit. The commission made a portion of the requested information available to the requestor. Subsequently, the commission received an additional request from the same requestor for "Table 1, Appendix A" of the same permit application. The commission takes no position with regard to the release of the remaining requested information. However, you have notified Huntsman Corporation ("Huntsman"), an interested third party, of the request for information pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). The commission has submitted the documents at issue to this office. We also received correspondence from Huntsman. We have considered their arguments and reviewed the submitted information. We have also considered comments submitted to this office by the requestor's office. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

In its correspondence to this office dated November 5, 2003, Huntsman states that it "withdraws the confidential claim for Table 1 of Appendix A," and thus, this table must be released to the requestor. In its correspondence dated November 22, 2003, Huntsman states that it "additionally withdraws the confidential claim for the process description and two

process flow diagrams.” Accordingly, this information must be released as well. Further, Huntsman states that it “maintains the claim of confidentiality for the plot plans based on homeland security concerns.” Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” However, Huntsman has not directed our attention to any federal or state law, nor are we aware of any federal or state law, under which any of the submitted plot plans are considered to be confidential for purposes of section 552.101. Therefore, Huntsman has failed to demonstrate that the submitted plot plans are excepted from disclosure under section 552.101 of the Government Code, and the plot plans must be released. In conclusion, the commission must release all of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 193725

Enc: Submitted documents

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